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IN THE

Supreme Court of the United States

NOVEMBER 28, 2000

BUSH, GEORGE W.
v.
PALM BEACH COUNTY CANVASSING BOARD,
ET AL

BRIEF IN SUPPORT OF NEITHER PARTY AFFIRMING IN PART THE OPINION OF THE FLORIDA SUPREME COURT AND SEEKING EQUITABLE RELIEF

FILED UNDER RULE 37.6 OF THE UNITED STATES SUPREME COURT

BRIEF AMICUS CURIAE ON BEHALF OF DISENFRANCHISED VOTERS IN THE USA

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NOTE:
THIS BRIEF WAS INITIALLY FILED ON BEHALF OF CHARLES WEILER, MARYANN HUNSBURGER AND PATRICK McFADDEN, citizens who voted in the November 2000 Election for the 43rd President of the United States.

By leave of these Amici and of the Clerk of the Supreme Court of the United States, this brief is hereby Consolidated with Petitions Pro Se by two voters who were unaware of the Rules of Procedure of the US Supreme Court of the United States and would have otherwise been without representation in this matter even though they have spent time and effort writing briefs for this case on their own. Those two voters, Gregory Apelain and Justin A. Frank, have joined the original Amici. Their comments essentially parallel the view of the original Amici and therefore will appear as Exhibit 1 and Exhibit 2 of the final version of this brief.

Subsequently, and by leave of these Amici, Exhibit 3 is Consolidated with this brief: Rabbi Richard M. Yellin, a voter and citizen of Palm Beach County suffered disenfranchisement in the recent election because of misaligned, defective ballots.

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BRIEF AMICUS CURIAE ON BEHALF OF
DISENFRANCHISED VOTERS IN THE USA

STATEMENT OF INTEREST BY AMICUS

Charles J. Weiler is a voter from the State of New Jersey. Mr Weiler has been an American citizen since he was born, and served in the US Peace Corps. Mr Weiler has been a registered voter since 1972. He is a self-declared "Independent" voter who does not regularly associate with any particular political party affiliation. Maryann B. Hunsberger, a voter from the State of New Jersey, has been an American citizen since she was born, and has been a registered voter since 1976. She is a disabled American. Patrick J. McFadden, is a voter from Pennsylvania, and has been an American citizen since he was born; he has been a registered voter since 1969. Gregory Apelain is a voter from the State of New Mexico. Mr. Apelian has been an American citizen since he was born. Mr. Apelian has been a registered

voter since 1980. Justin A. Frank, MD, is a voter from the District of Columbia, (Washington, D.C.). He has been an American citizen since he was born and has been a registered voter since 1964. Rabbi Richard M. Yellin, a voter and citizen of Palm Beach County, is a self-described Independent voter, previously Republican, and a voter since 1968.

Mr. Weiler and similarly situated US Citizens who voted in the State of New Jersey and other states in the United States during the national presidential election that was held on November 7, 2000 have an interest in preserving his franchise and that of other voters. Mr. Weiler and other similarly situated voters run the risk of having their vote diluted or disenfranchised by any or all unconstitutional Florida State Electoral laws or unconstitutional practices under Florida Election laws that obfuscate their votes so that the will of the people cannot be heard.

SUMMARY OF THE ARGUMENT

A fundamental precept of democracy embraces recourse to the courts after events have occurred. A fundamental precept of asking the courts to solve problems retrospectively is the essence of Judicial Review, which often requires crafting a new rule to fix a pre-existing problem after the problem has become manifest, but in the process also filling the void in the law with a new rule in order to solve the problem at bar. The case at bar involves the decision of the Florida Supreme Court solving a problem by crafting a rule as needed, but not in a prohibited "retroactive" manner. The problem it attempted to solve threatens to disenfranchise voters throughout the United States of America who voted in the national election for the 43rd President of the United States, if the laws in Florida are found to be unconstitutional or if the electoral process in Florida as applied in that election cannot withstand strict scrutiny as the sacrosanct right to vote requires under the United States Constitution. If the Florida law can be repaired as the Florida Supreme Court attempted, there should be a statewide recount of votes. If the law is so flawed that it must be discarded, there

should be a new election as a consequence of these flaws. The legislature, although authorized under the US Constitution to select electors, cannot supplant the will and voice of the people if that voice as expressed through voting has not been clearly heard. The Florida legislature must therefore await such recounted ballots or new election before it can instruct or select its electors.

I. RULE 37.6 NOTIFICATION

All parties to this case have granted a blanket consent for Amici. Note: this brief was initially filed on behalf of CHARLES WEILER, MARYANN HUNSBURGER AND PATRICK McFADDEN, citizens who voted in the November 2000 Election for the 43rd President of the United States. By leave of these Amici and of the Clerk of the Supreme Court of the United States, this brief is hereby Consolidated with Petitions Pro Se by two voters who were unaware of the Rules of Procedure of the US Supreme Court of the United States and would have otherwise been without representation in this matter even though they have spent time and effort writing briefs for this case on their own. Those two voters, Gregory Apelain and Justin A. Frank, have joined the original Amici. Their comments essentially parallel the view of the original Amici and therefore will appear as Exhibit 1, (Gregory Apelian) and Exhibit 2 (Justin Frank) in the final version of this brief.

II QUESTIONS PRESENTED BY THIS COURT:

1. Whether post-election judicial limitations on the discretion granted by the legislature to state executive officials to certify election results, and/or post-election judicially created standards for the determination of controversies concerning the appointment of presidential electors, violate the Due Process Clause or 3 U.S.C. s 5, which requires that a State resolve controversies relating to the appointment of electors under "laws enacted prior to" election day.

2. Whether the state court's decision, which cannot be reconciled with state statutes enacted before the election was held, is

inconsistent with Article II, Section 1, clause 2 of the Constitution, which provides that electors shall be appointed by each State "in such Manner as the Legislature thereof may direct."

3. What would be the consequences of this Court's finding that the decision of the Supreme Court of Florida does not comply with 3U.S.C Sec. 5?

III. STATEMENT OF THE CASE

A. POTENTIAL UNCONSTITUTIONAL PRACTICES IN FLORIDA IMPACT THE ENTIRE NATION

The United States Constitution (Article IV: Section 1.) requires "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the relief thereof." [See also: Exhibit 1 by Gregory Apelian]

The national election of President and Vice President transcends state boundaries and has implications beyond local (State) elections. Upholding the election laws faithfully executed in other States of the United States requires under the United States Constitution, as a social contract, that each State create through its legislature and implement through its own means lawfully impartial and fair elections. That social contract is codified in Article IV of the United States Constitution, the "full faith and credit" clause.

While the process may be shaped by the legislature of each State in part, that process is subject to judicial review to correct unforseen problems or irregularities, and the integrity of the entire nation election rests upon the good faith belief that each State will respect the other by refraining from improper practices. The appearance of impropriety in an election harms the integrity of the outcome of the whole and therefore is a matter of constitutional and national concern. Furthermore, this

Court has consistently given matters regarding the paramount right to vote strict scrutiny. Democracy so requires. The concept of Judicial Review, endemic in an appreciation of all the workings of this Court and the Courts of the States of the United States is a long-cherished principle of democracy, first pronounced by this Court nearly two hundred years ago, Marbury v. Madison 1 Cranch 137, 2 L. Ed. 60 (1803), which asked questions that would be equally apt before the Florida Supreme Court this year, "2d.If he has a right, and that right has been violated, doo the laws of this country afford him a remedy? [and] 3d. If they do afford him a remedy, is it a mandamus issuing from this Court?"

The Marbury Court exhibited prescience again, regarding events in Florida recent to us but centuries after it wrote its opinion, "It is not the office of the person to whom the writ is directed, but the nature of the thing to be done that the propriety or impropriety of issuing a mandamus, is to be determined".

As stated by Petitioner (p.4)"The choosing of presidential electors is a matter of great national importance and interest." 'As this Court stated in Anderson v. Celebrezze, 460 U.S. 780 (1983), [I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and Vice President of the United States are the only elected officials who represent all the voters in the Nation. Moreover, the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States.' Id. at 794-95. As cited by Petitioner. Furthermore, one need not have a special interest or stake in the outcome of a particular election in order to have a voice as a voter in that election (Kramer v Union Free School District No. 125 395 US 621 (1969). Under vigorous equal protection scrutiny, this Court has suggested that the fundamental character of the right to vote is crucial to ensuring that elected officials fairly represent the electorate. [Laurence Tribe, AMERICAN CONSTITUTIONAL LAW "RIGHTS OF POLITICAL PARTICIPATION" Second Edition, The Foundation Press NY at 1086-87]

One unprecedented aspect of the recent election in Florida is that it has produced a remarkable amount of litigation, characterized by the Petitioner as "chaos". Without addressing the merits of these cases, the mere existence of such litigation demonstrates that the existing Florida laws are, if not unconstitutional, then problematic at best. Dozens of cases have been filed, only a small sample of which are cited here for brevity. (See: McDERMOTT, et al , CANVASSING BOARD OF VOLUSIA COUNTY, FLORIDA, Plaintiffs, v. HONORABLE KATHERINE HARRIS, as SECRETARY OF STATE, STATE OF FLORIDA, and HONORABLE KATHERINE HARRIS, HONORABLE BOB CRAWFORD, HONORABLE LAURENCE C. ROBERTS, as the ELECTIONS CANVASSING COMMISSION, Defendants requesting extended time from the Secretary of State of Florida to count votes; See also: MILTON H. MILLER, a registered voter of the State of Florida Plaintiff, v. KATHERINE HARRIS, Secretary of State, Chief Election Officer, THERESA LePORE. Supervisor of Elections for Palm Beach County, Florida, and FLORIDA DEPT OF STATE, DIVISION OF ELECTIONS Defendant, seeking EMERGENCY MOTION FOR INJUCTIVE RELIEF DOCKET-NUMBER: 00-9004-CIV United States District Court, S.D. Florida. November 8, 2000)

In Miller V,. Harris, above, (withdrawn) Plaintiff voted for a presidential candidate but was unsure of who he voted for as a result of the "confusing and misleading ballot" See also: SIEGEL, et al., Florida REGISTERED VOTERS, PLAINTIFFS/APPELLANTS, and GOVERNOR GEORGE W. BUSH and DICK CHENEY, as CANDIDATES for PRESIDENT and VICE PRESIDENT of the UNITED STATES OF AMERICA, Plaintiffs-Appellants v. THERESA LePORE, et. Al. COUNTY CANVASSING BOARDS of PALM BEACH, MIAMI-DADE, BROWARD and VOLUSIA COUNTIES, Respectively, Defendants-Appellees. 00-15981 United States Court of Appeals, Eleventh Circuit. November 15, 2000; See also ANDRE FLADELL and ALBERTA MCCARTHY and LILLIAN GAINES, Plaintiffs. vs. PALM BEACH COUNTY

CANVASSING BOARD, as constituted by County Court Judge Charles Burton; Supervisor of Elections Theresa LePore; and County Commissioner Carol Roberts; GEORGE W. BUSH, DICK CHENEY, AL GORE and JOE LIEBERMAN, Defendants. CASE NO. CL '00 10965 Florida Circuit Court, Fifteenth Judicial Circuit, Palm Beach County. November 8, 2000 which states in its pleadings: "all of the candidates for the Presidential election were listed on two facing pages of the ballot booklet that is attached to each voting machine. The punch holes for each candidate were in a single column that ran between the facing pages.. The names of independent (non-Democratic and non-Republican candidates such as Pat Buchanan) and the punch holes for such candidates were placed adjacent to the names of the Democratic Candidates, Al Gore and Joe Lieberman. . As a result, many voters, and in particular, many senior citizens, intending to vote for Al Gore and Joe Lieberman, mistakenly punched the punch hole on the ballot card designated for Pat Buchanan and Ezola Foster (hole #2).[That same document continues]"In addition, the holes in the ballot cards for numbers 4 (Gore and Lieberman) and 5 (Pat Buchannan and Ezola Foster) were directly adjacent to the section of the ballot listing the Democratic candidates (Gore and Lieberman). As a result, many voters, and in particular, many senior citizens, intending to vote for Al Gore and Joe Lieberman punched punch hole numbers 4 and 5 in the mistaken belief that such numbers referred to a vote for Al Gore and Joe Lieberman. It has been reported in the Palm Beach Post that in Palm Beach County Reform Candidates (Pat Buchannan and Ezola Foster) received 3,040 votes."). Despite this morass, Florida law does clearly require the counties and if necessary, reviewing courts **"to determine the voter's intent."** Fla. Stat. s 102.166(7) (emphasis added). The totality of the problems described in good faith in these and other pleadings silence the voice of the people in Florida so that the true intentions of the voters remains unknown.

B. STRICT SCRUTINY IS WARRANTED TO PRESERVE THE FRANCHISE

When viewed in the aggregate, the citizen cases filed in good faith (listed above) raise a suspicion of impropriety that merits strict scrutiny when the fundamental right to vote is at stake, especially when the election involved is a national election for the President of the United States.

This situation was further complicated on November 26, 2000 when, pursuant to the first of two deadlines made available to the Florida Secretary of State in her discretion for accepting final vote tallies for certification, the Secretary of State accepted a combination of original tallies from some counties, hand counted-recount tallies with corrections from other counties, and rejected a partial recount from yet another county which requested additional time to complete its task, even though that same county noted that its work would be completed before the second of the court-established deadlines. It has also been reported in news media that there may be anywhere from ten thousand to twenty thousand uncounted votes across various Florida counties. The Voting Rights Act was designed to protect every citizen's vote from precisely such errors. Also, the law is designed top prevent the dilution or usurpation of the votes from blacks, other minorities or other suspect classifications in a pattern, "had all people cast ballots that could be counted along the same lines as their neighbors, Mr. Gore would have gained nearly 7000 (seven thousand) votes. [See New York times, Wednesday Nov 29 2000 "Racial Pattern In Demographics of Error-Prone Ballots" A25 by Josh Barbanel and Ford Fessenden] The same article previously noted that, "The impact of these differences on the outcome will never be known but their potential magnitude is evident in Miami-Dade County, where predominantly black precincts saw their votes thrown out at twice the rate as Hispanic precincts and nearly four times the rate of white precincts. In all, one out of eleven ballots in predominantly black precincts were rejected, a total of 9,904 (nine thousand nine hundred and four)." Id., New York

Times. [See also: Exhibit 2 by Justin A. Frank, MD]

The Voting Rights Act of 1970 was enacted to enforce the Fifteenth Amendment which provides that the right of citizens to vote shall not be denied or abridged by the United States or by any state on count of race, color, or previous condition of servitude. (National Ass'n for Advancement of Colored People, Inc. (NAACP) v. City of Niagara Falls, N.Y., W.D.N.Y.1994, 913 F.Supp. 722, affirmed 65 F.3d 1002.)

Thus, the "standardless" recounting in "chaos" about which the Petitioner initially complained was actually compounded by partisan refusal to accept partial tallies and await a later, but no less convenient deadline before certification [See Petitioner's Brief]. Consequently, whether by intention or by inherent flaws in the Florida Election laws and its attendant process, the Certified votes for Florida at the time of this writing are an incomplete admixture of several inconsistent tallying methods and cannot accurately reflect the will of the people. Such problems, regardless of their cause or their precise number, rise to such a level of magnitude that they encompass the entire voting process and have undermined the integrity of the entire nation's votes, threatening to abridge the Fourteenth Amendment due process rights of all voting citizens in the United States.

The more voters that are disenfranchised in Florida and in the nation, the more we give up our democracy. The good faith obligation of the States to pass and uphold fair election laws is a part of the social contract between the States of the United States that is a fundamental bedrock of our nation's union. Under the United States Constitution Article IV, full faith and credit for the acts of the respective States requires no less than an honorable and honored mutual respect, exhibited in part through fair and accurate election laws and attendant electoral process. To be meaningful, such requirements for full faith and credit necessarily include keeping "such acts, records, and

proceedings" of elections for President and Vice President of the United States. Furthermore, the failure of any one State to uphold its portion of the social contract that requires fair, accurate and objective counting (or recounting) of ballots is a breach of the social contract between the States of the United States as expressed and implied in the US Constitution. Such a breach of the social contract taints the entirety of any national Presidential election, thereby disenfranchising all citizens who voted in said national election.

IV. QUESTIONS PRESENTED TO THE COURT

QUESTION 1: Whether post-election judicial limitations on the discretion granted by the legislature to state executive officials to certify election results, and/or post-election judicially created standards for the determination of controversies concerning the appointment of presidential electors, violate the Due Process Clause or 3 U.S.C. s 5, which requires that a State resolve controversies relating to the appointment of electors under "laws enacted prior to" election day.

A. JUDICIAL REVIEW, ALTHOUGH RETROSPECTIVE IS NOT A RETROACTIVE USE OF THE LAW.

Petitioner mis-characterizes the decision of the Florida Supreme Court as "retroactive" and perhaps even prohibited "ex post facto" laws (See Petitioner's Brief) . Yet, the logic of a situation rife with inconsistencies in the written legislative statute mandates that a court review the election laws as applied to ballots cast by voters. Such review can only occur after the electoral process has revealed its embedded errors, and therefore by definition must be a post-hoc review. To be meaningful, the court must be able to rule without being considered to have written prescribed retroactive or ex post facto rules. The Constitutional principle of Judicial Review has long been known to this Court, first articulated nearly two hundred years ago in Marbury v. Madison 1 Cranch 137, 2 L.Ed 60 (1803).

Petitioner has noted, "Given the national significance of the

Florida election results, it is essential that the counting of ballots be conducted in a fair and consistent manner in accordance with established Florida law". Petitioner fails to point out that the system, absent judicial intervention, had reached an impasse because of the legislature's failure to provide clear deadlines for beginning or completing requested or mandatory recounts of ballots. The Florida Supreme Court crafted a deadline to save the statute. In Marbury v. Madison 1 Cranch 137, 2 L.Ed. 60 (1803), whose remarkable prescience speaks to the issues at Bar, [supra] this Court further opined, "Those then who controvert the principle that the Constitution is to be considered, in court, as paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution and see only the law".

If anything, the more convenient was also the later deadline: Tallies accepted at the first deadline required the Secretary of State on Sunday November 26 2000 to open her offices, which would otherwise be closed for the National Holiday of the Thanksgiving weekend; the second deadline was Monday morning at 9a.m.

B. THE FLORIDA COURT RULED NARROWLY, CONSISTENT WITH THE UNITED STATES CONSTITUTION AND THE VOTING RIGHTS ACT OF 1965 AND THE OBLIGATION OF COURTS TO RESOLVE POST-ELECTION DISPUTES

To the extent that errors in the Florida electoral process impinge on the franchise within and without the State, the Florida Supreme Court surgically attempted to reconstruct the broken fragments of the statute in order revive an otherwise lifeless will of the people as it was laid before its bar.

To rectify this situation requires either a statewide recount with appropriate guidelines set forth by this Court, or a new election under new laws. The Florida Supreme Court held that the right to vote is the paramount right and therefore read savings measures into the text of the otherwise unworkable statute that governed the Florida election for the 43rd President of the United

States. The alternative would have required the voters to hold a new election without clear rules to govern the election.

Absent a special session of the Florida legislature to craft such rules six or more days prior to the election itself. The Florida Supreme Court articulated again the principle often expressed by this Court, that the primacy of voting and respect for the exercise of the franchise is a fundamental right to all citizens. The court reaffirmed that voting is the paramount right of the people; one that could not be supplanted or transgressed by hyper technical attention to deadlines, if the price of those deadlines cost voters their rights. Marbury v. Madison 1 Cranch 137, 2 L.Ed. 60 (1803), "It is emphatically the province and duty of the judicial department n to say what the law is".

Petitioner has erroneously claimed "By retroactively changing the law in Florida through judicial intervention, the Supreme Court of Florida's decision preventing the Secretary of State of Florida from exercising her legislatively conferred authority to perform the act of certification that would complete the electoral process in Florida has added to that angst and has strayed from established federal constitutional and statutory law."

If anything, however, the Florida court ruled too narrowly and with too little retrospective oversight, leaving to the discretion of the counties the methods for recounting votes and a too-small window of opportunity for recounting by hand the votes in densely populated counties, who later abandoned their recount efforts. To the extent that the Petitioner complains there are no standards, the court wisely attempted to defer to counties to allow them their traditional freely chosen methods, in a reading of the very clause that Petitioner cites for the argument that the States shall choose electors "in such Manner as the Legislature thereof may direct". In essence, the Petitioner's suggested reading of the United States Constitution is counter-intuitive; restraining the counties from determining the methods of tallying the ballots from their own voters while giving the legislature unbridled discretion regarding the selection of

electors. Neither of these approaches can be tolerated if they fail to pass constitutional muster under the strict scrutiny afforded the right to vote.

Petitioner continues: "The manual recount underway in certain Florida counties is unconstitutional because it is being conducted in the absence of meaningful objective standards." A recount cannot, by its nature be, unconstitutional. The methods written by the legislature to achieve the tabulation and recording of votes can, however, be so flawed that the system is unconstitutional as applied in a given case. We believe that in this case, the Florida law has been applied in a manner that is unconstitutional and must be rectified or in the alternative, if it is indeed beyond repair, then new rules must be set forth by this Court or the Florida legislature in a timely manner with a new election by Florida voters for the 43rd President of the United States.

The lack of adequate timetables in the Florida Electoral law for candidates to request recounts, and for recounts to be completed; the ambiguity within the Florida statute that did not reveal a specific preference for hand counted-ballots or machine counted ballots for the purposes of recounting; and the absence of any clarifying instruction on a statewide basis to determine how electoral ballots are to be counted are not necessarily fatal to the statute in itself if any one of these problems could be viewed in isolation.

The totality of these peculiar circumstances, however, makes it so very difficult to sort out the precise nature of the problems that questions can be answered and problems can be corrected. There remain the lingering doubts raised by improperly drafted ballots that were not legible to voters; improper tallying by a hodgepodge of methods with so-called "standardless" procedures; (See Petitioner's Brief, in several instances) defects in the availability and accessibility of voting places themselves. Media accounts suggest that these irregularities also have occurred in great proportion in areas inhabited by blacks, minorities and certain ethnic groups, whose voting rights enjoy

special protection under the Fourteenth and Fifteenth Amendments of the United States Constitution, as implemented Congress in the Voting Rights Act and upheld by this Court in previous cases. The aim of the Voting Rights Act is to prevent political bodies from implementing election systems or practices which Act, whether intentionally or not, to minimize, cancel or dilute the voting strength or political effectiveness of minority groups. (League of United Latin American Citizens (LULAC) v. North East Independent School Dist., W.D.Tex.1995, 903 F.Supp. 1071.) Such discriminatory consequences, whether intended or not, would also raise concern that the entire election was tainted by potential violations of the Voting Rights Act.

Thus, the post-election "judicial limitations" in this case that concern the Petitioner were designed to foster, rather than burden, constitutional due process. The Florida Supreme Court carefully reasoned in order to save a defective election process, in order to avoid the very confusion that confronts our nation today.

In this regard, the Florida Supreme Court should not be reversed for having been too deferential to a statute that was in fact defective. The election laws, and not the written opinion of the reviewing court that attempted to mend the statutes errors, was inartfully drafted and has thereby obfuscated the will of the people. The choice before this Court, therefore, is whether to further rectify the errors in the statute by reading into it new deadlines that will reasonably allow time to recount by hand or otherwise all of the ballots of all the voters in the State of Florida, or in the alternative, declare the statute and the election that was conducted pursuant to it invalid, thereby requiring a new election to be held in the State of Florida to determine who will be the winner of the 43rd Presidential election in Florida.

C. VOTING RIGHTS OF ALL VOTERS ARE IMPACTED BY THESE CIRCUMSTANCES REQUIRING A COMPLETE RECOUNT OF ALL

BALLOTS OR A NEW ELECTION

Under the Civil Rights Act 42 USC 1983 and the Voting Rights Act 42 USC 1973 and the Fourteenth Amendment of the US Constitution , The right of the people to vote and to express their political will in elections by exercising their franchise is sacrosanct under the US Constitution and is protected by the Voting Rights Act as upheld in South Carolina v Katzenbach 01, 314-15 (1966).As evinced by the pending or withdrawn litigation cited above, these allegations filed in good faith by citizens are only a small fraction of the totality of the irregularities and improprieties within the voting process as it was conducted in Florida in the November 2000 Presidential election.

The U.S. Constitution, Amendment XIV: Section 1 clearly protects the franchise of all citizens equally regardless of state of residence: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United State; nor shall any state deprive any person of life, liberty, or prosperity without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

Any effort to undermine the integrity of this vital social contract that binds the States to each other by allowing a State to fall below the necessary minimum protections of the right to vote for its citizens in a National Presidential election undermines the integrity of all of the states and taints the valued franchise of citizens in those states that have followed the agreed upon due process standards. Such protections are reinforced by the Voting Rights Act (42 USC 1973) (quote) 42U.S.C.A. §1973 UNITED STATES CODE ANNOTATED TITLE 42. THE PUBLIC HEALTH AND WELFARE CHAPTER 20--ELECTIVE FRANCHISE SUBCHAPTER I-A--ENFORCEMENT OF VOTING RIGHTS ""§§ 1973. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

In order for the national election of the 43rd President of the United States to be viewed as fair and impartial in the eyes of all USA voters who participate in that process, as well as the world or other third party objective observers it is imperative these federal standards, set forth in the Voting Rights Act as upheld by this Court, be met. When use of the law is popularly viewed as unfair and people believe that something happened that was improper, such that voters feel cheated by the process itself in Florida, (whether or not there has been any underlying fraud or corruption in the process itself,) impurity of the voice of the people thereby undermines the voice of all franchised voters who voted in the same national election for the US President.

These types of irregularities bespeak an underlying corruption in the process, whether or not any such improprieties have occurred and resemble more of the civil and political rights issues seen in foreign nations than the USA's proud democratic history. The harms caused by that appearance of impropriety which is repugnant to our democratic system of governance must be remedied. In such a case the sole valid remedy must be to remove the taint upon the people's franchise by calling for a re-election whereby the voters of Florida whose voice has been

overtaken by the existing system will have a new opportunity to vote for the President and Vice President of the United States.

QUESTION 2:

Whether the state court's decision, which cannot be reconciled with state statutes enacted before the election was held, is inconsistent with Article II, Section 1, clause 2 of the Constitution, which provides that electors shall be appointed by each State "in such Manner as the Legislature thereof may direct."

A. THE UNITED STATES CONSTITUTION ALLOWS LEEWEAY TO THE STATES BUT DOES NOT ALLOW OR ENCOURAGE LEGISLATORS TO SUBSTITUTE THEIR WISHES OR DESIRES FOR THE WILL OF THE PEOPLE.

Ironically, the answer to Petitioner's seemingly obvious question in this case is one of first impression without precedent before this Court. Thus, we must look to the logic of the plain meaning of the words in their context, as a part of the totality of the precepts that create a framework for democratic republican governance, in order to guide the use of these words. Although States are left to fashion their methods of determining electors as their representatives, it is nonetheless dictated by logic as well as constitutional principles that such electors must vote in a manner that is consistent with the will of the majority and that any selection before all votes have been counted, or any selection based on an arbitrary portion of the votes to be tallied (but not all the ballots cast that have been tallied) is a usurpation of the legitimate power of the people as expressed through exercising their franchise. It is unlikely, if not inconceivable, that the US Constitution could be read to allow Florida legislators (or the legislators of any other State) to simply select a Presidential candidate of their choice who has not been chosen by the majority of the voters in their state. The full faith and credit clause Article IV of the US Constitution, demands that such appointment of electors be achieved without abridging the

rights of any voters in order to maintain the integrity of the votes of citizens from other states. Marbury v. Madison 1 Cranch 137, 2 L.Ed. 60 (1803), instructs us that in such situations, " The constitution is either superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable".

The US Constitution grants States leeway and discretion in selecting their electors, but only insofar as the selection is consistent with the fundamental precepts of democracy. The choice must not be anarchistic or autocratic, but consistent with democratic principles, guided by and reflecting the will of the majority of the voters in that State. Furthermore, the methods chosen by said legislatures must comport with the parameters of democratic governance set forth in the United states Constitution and must exhibit mutual respect for the other States, consistent with Article IV's commitment by the States to accord each other full faith and credit. Thus, the States have reserved the right to make certain discretionary choices regarding the methodology for selecting electors, but the candidate for whom those electors cast their ballots must be chosen by democratic means and must be consistent with the wishes of the majority of voters in the State.

B. "THE RIGHT TO VOTE" IN THE U.S. CONSTITUTION IS SUPREME OVER ANY STATE LEGISLATURE

AMENDMENT XXVI [1971]Section1. "The Right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age"
Section 2. "The Congress shall have power to enforce this article

by appropriate legislation"

"The right to vote" could be rendered meaningless if it cannot be used to direct legislators to represent the will of all the people when selecting Electors for the Presidency of the United States. Long-standing case law demonstrates that such selection can be "winner take all" or be ruled by "proportionality" [McPherson v Blacker, Secretary of State 13 S.Ct. 3 36 L.Ed. 869; 146 U.S. 1, 13 S.Ct. 3 (1892.)]. Without question, the Legislature of each State is bound by law and its obligation to all of the other States within the United States, to uphold not supercede vital United States Constitutional principles when deliberating and selecting Electors.

The "Supremacy Clause" of the United States Constitution, Article VI , "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof;.... shall be the Supreme Law of the Land;... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding".

"The Right to vote" as stated in Amendment XXVI and as implied in Article IX (below) Article XV (supra) Amendment XIX (supra) is only one of a host of other portions of the United States Constitution. This last Amendment is the final component in the United states Constitution that completes the universal reach and importance of the right of the franchise in the United States of America. In the course of two centuries of struggle around issues of the franchise, Our laws previously had granted the franchise to citizens in a multi-tiered approach, from its inception to the contemporary times.

Historically, it is unfair but true that first, the U. S. Constitution as ratified by the States in the eighteenth century granted representation to free, property holding white men over age 21 who were treated under law as "whole persons". The plain language of the United States Constitution in those early times of the eighteenth century expressly excluded Indians and persons not "free" Such persons were counted as "three fifths of a

person" in (year) for the purpose of representation and taxation. It is important to note here that such a narrowly limited franchise would be viewed politically untenable and repugnant to the U.S. Constitution today.

Nonetheless, the two-tiered and inherently unequal formula that was embedded in the original Constitution of the United States, although modified, made possible the survival of the young Nation. Although limited franchise is now viewed as arcane, this political compromise was actually vital to the establishment of the Nation: the formula was derived as a part of a greater legislative compromise in order to form a more perfect union by granting representation to slave-holding states according to their population, but without admitting that slaves were "whole persons" who would arguably be vested with the right to vote. Constitutional scholars and historians have taught us that without the support of slaveholding states, the entire constitutional structure that is our democracy would not have survived.

Then, following a bloody internal war and deliberate efforts at social change, the United States Congress and the States of the United States very slowly and deliberately Amended the U.S. Constitution so that "the right to vote" could not be denied on ground of previous servitude (slave status) thereby granting the franchise to black males (Amendment XV, 1870). This unprecedented sweeping change occurred nearly a century after the original ratification of the United States Constitution, and still the franchise excluded Women and Indians.

In 1920, the United States Constitution was Amended to extend the franchise to Women. When Amendment XIX was ratified by the States, the franchise could no longer be denied on grounds of sex, thus granting the franchise to women regardless whether black or white. In time also, Indians have also been granted citizenship, if born in the US and paying taxes, and with it, the right to vote.

Lastly, the term "right to... vote" as it appears in Amendment XXVI prevents denial of the right based on age (1971). Thus, "The Right to Vote" which was once a limited franchise is now an express Right of the all the Citizens of the United States. This may mean that our Constitutional limits on the power of the State legislatures in selecting Electors for the Presidency has also changed, to reflect and become consistent with the evolution of United States political history.

Significantly, "The right to vote" is stated clearly in Amendment XVI and was subject to ratification by the legislatures of the States of the United States. It is, therefore a legislative act by the States Legislatures themselves, as well as a clearly articulated U.S. Constitutional principle, binding on the States.

The concept that a constitutional principle, even one that is not clearly articulated, can be binding on the federal government as well as the States was found to exist by this Court in Griswold v Conn. 381 US 479, 85 S.Ct. 1678, 14 L.Ed2d 510(1965). In Griswold, the Court found rights that were not expressly articulated in the U.S. Constitution itself were reserved to the People, in the penumbra of the Amendment IX of the United States constitution: [1791] Amendment IX "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people".

The Ninth Amendment has been rarely cited, but it has been held by this Court that the implied rights "reatined by the people" not enumerated in the rest of the text but are found in the interstices of the United States Constitution.

In Griswold, this Court upheld the right of married couples to choose contraception even though the protected right at bar was not expressly stated but implied in the federal constitution and binding on the States. Certainly, if the federal rights protect contraception rights (which might have First Amendment religious implications to militate against such a finding), then there can be no question of the primacy under United States

Constitutional law and the law of the States regarding the sacosanct bond between the People and the State embodied in the act of voting.

This Court has been asked to examine the precedent of McPherson v Blacker Secretary of State 13 S.Ct. 3 36 L.Ed. 869; 146 U.S. 1, 13 S.Ct. 3. October 17, 1892. as it might apply to the matter prematurely brought before this Bar. McPherson concerned the right of the 19th Century Michigan Legislature to alter the means for allocating electoral votes under State law and demonstrates that States do have leeway in such matters regarding the "manner of selecting electors".

McPherson, if not inapposite in this context, is certainly a misleading precedent if used as a guide, because of two important factors that the Court did not discuss aloud: First, McPherson concerned the use of proportionality, rather than a "winner take all majority" of electoral votes when selecting electors. Such a change, although novel, was in fact bringing the electoral votes closer to the People: enabling them to reflect the multi-faceted will of the majority, by sending electors for more than one candidate to the Electoral College for President. Certainly, were Florida to do the same for our Electoral College on December 18, 2000, many people would feel far more secure about the future role of democracy in our Republic and voters who had voted for one of two leading candidates when there is no clear majority in Florida would not feel disenfranchised as they complain about here.

Secondly, there has been remarkable and irretrievable social change in the century and a quarter since the McPherson decision. To overlook the changes that brought the "right to vote" to codification for blacks, Indians, and women is to naively overlook what Justice Douglas of this Court called, "the dynamic component of history".[Justice William O. Douglas, Eighth Annual Benjamin N. Cardozo Lecture delivered before the Association of the Bar of the City of New York April 12 1949, Essays on Jurisprudence from the Columbia Law Review,

Columbia University Press New York and London 1963 Reprinted with permission from 4 The Record of the Ass'n of the Bar of the City of New York No 5 (1949). "So far as constitutional law is concerned, stare decisis must give way before the dynamic component of history. ... It will then take an oncoming group from the new generation to catch the broader vision which may require an undoing of the work of our present and their past.". Having previously noted in the same essay that "Rules that once seem fixed and certain today seem beclouded", but viewing such changes in stare decisis as healthy for human progress towards equality.]

In essence, the views of the U. S. Constitution itself have evolved away from the two-tiered notion that there were "three fifths" persons for representation and "whole persons" and has completely filled this chasm with the "Right to Vote" articulated in the XXVIII Amendment of the U. S. Constitution.

This social change explains and requires a new, more deomcoratic and majoritarian view of the legislature's role in selecting electors as representatives of the people to elect the President and Vice President of the nation compared to the approach employed a century ago. Although there was an incohate right to vote among those who had the privilege of a franchise in the 1890's, that population was so small that there would be armed insurrection by the disenfranchised if anyone believed there was a right to vote. Indeed, suffrage was the subject of rioting in the 19th century. Now, the riots are over, there is calm and there is universal suffrage among people over 18 in the united States. The legal distinctions that governed the parsed concepts of the franchise in the Nineteenth Century are gone; the 21st Century enjoys a codified "Right to Vote" that must be heard and heeded by all.

The confusion, characterized by Petitioner as "chaos" that our nation is witnessing in Florida is the playing out of the final patching of the holes created by the initial chasm that was created to deliberately deprive votes to blacks and women, in

order to form a more perfect union two hundred years ago. Such theories that governed the times of McPherson, whether or not they were morally and constitutionally correct even in their own context, do not exist today. In 1896 in Plessy v Ferguson 163 US 537 (1896) d that "separate but equal" accommodations" in railways were legal, thereby granting an imprimatur to a two-tiered society that was racially divided. McPherson was part of that greater context, too, and therefore must be viewed cautiously when seeking its guidance for precedent: McPherson must be viewed as having been altered by the "dynamic component of history".

Significantly, in Brown v Board of Education, 347 US 483, 74 S.Ct 686, 98 L. Ed. 873 (1954) Plessy v Ferguson was overruled. Brown represented a landmark decison for its substance and also because it is one of the few times if ever that this Court has ever reversed its own opinion by specifically overruling its own doctrine of articulated Constitutional law, this Court courageously and unanimously erased the validity of the Constitutional theories that governed a two-tiered society in McPherson's time.

The importance of this change in U. S. Constitutional law cannot be understated or undermined. Instantly, laws that were upheld as legal were wrong and illegitimate in their terms by the terms of Brown as articulated by this Court.

It has taken decades of struggle to self-correct the important embedded errors in the legal system that came about through this two-tiered history, and statutes like the Voting Rights Act, and the right to public accommodation to ensure the public's access to voting in the Americans With Disabilities Act (ADA) 42 U.S.C. 1221 (1990) are a part of that heritage designed to extend voting in the United States federal elections to embrace new constituencies who were disenfranchised under the prior regime of the laws.

It is a part of the "dynamic component of history" [See; Douglas

infra] that these vestiges of the racism and sexism that were institutionally embedded in the old two-tiered system (now overruled as illegitimate) should be played out in Florida. According to Richard Hofstadter , William Miller and Daniel Aaron The United Stats: The History of A Republic" Prentice Hall, Inc. Englewood Cliffs New Jersey 1957 Second Edition 1967, pp 478-479 "VI. The Extension of White Supremacy" and "The Solid South"].

C. THE WILL OF THE PEOPLE OF FLORIDA IS PRESENTLY UNKNOWN

It would be unconscionable, as well as unconstitutional for the legislature to disregard the will of the people by selecting a candidate that the people would not have elected. So too, in an election so close that the difference between the votes separating the certified winner and the loser is smaller than the statistical margin of error for counting, it is unclear whether the will of the people can be discerned or clearly heard. Therefore, the Florida legislature cannot proceed to select electors if either of the two following consequences have arisen: (1) the underlying Florida law that governed the election itself was based on an unconstitutional statute or (2) the votes from the State have not been counted properly or all votes have not been tallied, regardless of the certifications by election officials.

The consequences of finding otherwise, would be the ability of a state Legislature to pick any electors they wish, without regard to the total vote of the people, thereby breaking the full faith and redit clause of the US Constitution.

QUESTION 3

What would be the consequences of this Court's finding that the decision of the Supreme Court of Florida does not comply with 3U.S.C Sec. 5?

UNCONSTITUTIONAL ELECTION LAWS REQUIRE REMEDIES SUCH AS RECOUNT OR A NEW ELECTION

If Florida is found to have breached the social contract between the states that implicitly but inevitably is a fundamental part of the respect accorded each and every State of the United States to the other States, breaking the obligation to grant each State "full faith and credit" under Article IV of the US Constitution, immediate and deliberate efforts must be made to repair the breach. Otherwise, such a breach of the social contract by Florida would taint the democratic process of the national election, thereby disenfranchising each citizen in the United States who voted in the election.

The simplest and most trustworthy method for correcting these defects for the immediate question at bar concerning the election of the 43rd President of the United States of America: either recount all the votes in the State of Florida with oversight from federal authorities, or hold a new election with federal oversight pursuant to the precepts of the Voting Rights Act 42 US.C. 1973. Judicial oversight in this regard, despite the disparaging characterization used by Petitioner, is a necessary and appropriate use of the power of Judicial Review as it appears as a gloss in the text of Article III of the United States Constitution, and is commonplace when there are election problems to be sorted out. In the alternative, we believe the People of this Nation will be better satisfied if all the discomfort of the tainted Florida election can be removed by calling for a new direct ballot election in the State of Florida.

CONCLUSION: UNCONSTITUTIONAL LAWS CANNOT BE SUPPLANTED BY THE ARBITRARY SELECTION OF ELECTORS BY LEGISLATORS AND REQUIRE A FULL RECOUNT OF ALL BALLOTS OR A NEW ELECTION

The full faith and credit clause in Article IV of the US Constitution requires that states extend the same rights to all citizens of the United States and to express the same respect for all of the laws of the separate states equally. As Justice Marshall stated in McCulloch v Maryland 17 US (4 Wheat.) 316, 421 (1819), "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to this end, which are not prohibited but consistent with the letter and spirit of the constitution are constitutional".

Due to the exceptionally small margin which is within the margin of error of the machines themselves, a hand count of all ballots in Florida essential to preserving the franchise of every citizen who has voted in this nations'' November 2000 election. It is inconceivable that a manual hand count, although cumbersome and time consuming, can be so long in its duration to amount to a violation of due process rendering it unconstitutional. In the event that this Court finds such delays would harm the Republic without regard to Constitutional issues, it is respectfully requested that there be a new vote in the State of Florida, following, if necessary, laws that may be written by its State legislature to correct defects in existing Florida State Election laws, or such other remedies as this Court may deem appropriate. We nonetheless most respectfully and most vehemently pray that this Court should make every effort to include the votes of all Florida voters, whether by hand count or by a new voter election, so that democratic process will go forward and that the franchise of all voters shall be preserved.

EXHIBIT 1:

Pro Se filing of
Amicus Curiae Brief (now consolidated with
DISENFRANCHISED VOTERS IN THE USA)
On behalf of:Gregory Apelian, Vice President Gore,
Governor Bush, and the American Voting Publicv

On Petition for Amicus Curiae to the Supreme Court of the United States

Gregory Apelian - A Private Citizen,
534 Jewel Court SE,
Rio Rancho, NM 87124
505-994-0390

This Amicus Curiae Brief is being filed in order to ensure my rights as a citizen, under the Constitution of these United States, are protected and fully heard. The brief is to be filed with the Supreme Court of these United States of America on behalf of myself, an American Citizen, Gregory Apelian of 534 Jewel Court SE, Rio Rancho, New Mexico, 87124, and is also filed on behalf of Vice President Gore, Governor Bush, and the entire American Voting Public. This brief is a formal Appeal on Constitutional Grounds for a Corrective Re-vote Remedy to the current Presidential Election crisis.

This brief asserts that the Supreme Court should throw out the results of the first Presidential vote in those states whereby the margin of claimed "victory" was, close to, or less than the statistical margin of error attributed to the unconstitutional punch-ballot system which denies voters their rights to equal protection under the Fourteenth Amendment of the US Constitution. A Corrective Re-vote should be mandated by the Supreme Court on this basis. These unconstitutional punch-ballots are used in 48% of the nation, regularly destroying

the votes of thousands of citizens who all deserve equal protection regarding their right to vote as defined by the Fourteenth Amendment to the US Constitution.

The Constitutional cites contained herein, will provide a practical framework which will reveal the current arguments by Governor Bush's lawyers and Vice President Gore's lawyers, relative to the Florida Supreme Court Ruling mandating manual re-counts, to be groundless and based on the illusory premise that there was a Constitutionally valid vote worth re-counting in the first place. It logically follows that all re-counts of a vote which was unconstitutional and invalid from the start, become likewise invalid by their intimate extrapolation from the fraudulent current vote tallies.

The Constitutional cites contained herein, also include a Constitutionally-based Remedy, capable of returning the selection of our President to the American Voters, whose equal protection rights under the Fourteenth Amendment have been discarded during this Presidential Election crisis. The Constitutional Remedy contained herein, will also simultaneously restore a truly constructive bipartisan atmosphere based upon sound Democratic application of said Constitutionality (1). The current Presidential Election is being falsely and absurdly tabulated from a grossly deficient voting system with a known margin of error far in excess to what either candidate can claim as a margin of "victory." This simple assertion therefore renders the current vote tabulation invalid, for it is clearly unconstitutional as measured by its inability to satisfy the vital criteria of the Fourteenth Amendment, which guarantees the rights of all citizens to have equal protection under the Law. This would not be the case if the current voting apparatus were the best, most efficient technological system available for casting votes, but as we now have been made so painfully aware, and as a Congressional Election Commission pointed out in a formal report to the Congress, the current punch-ballot system being used by 48% of America's citizens, is grossly innacurate compared to several imminently available,

easy to deploy technologies, which do a far better j! ob in protecting the Fourteenth Amendment rights of equal protection, by ensuring the least possible amount of lost votes due to system error and/or voter error.

Furthermore, the Congressional Commission's twelve year-old report on voting systems, stated specifically that the grossly inaccurate punch-ballot voting systems should be replaced by more efficient methods as soon as possible(2). Therefore, the only just and logical conclusion to the current Constitutionally-protected mandate to supply a "fair and accurate' vote, reflecting the actual will of the American Voters (and not just some unreasonable facsimile), is to replace all punch-ballot type polling machines with simple computer systems, setup in each of the disputed polling places as a replacement for a voting process that we now so glaringly have been made to realize, can never adequately protect the nation's Fourteenth Amendment Rights in a close election.

We The People, deserve as a most basic Right, to have our most cherished act of Democratic Participation, the expression of our votes, to be counted by the most efficient means available. As per testimony of various computer experts, the computer polling areas can easily be setup with central servers acting as the counting "brains" for terminals which will offer voters a simple choice between -- [A] Gore, and [B] Bush. By this corrective method, the American Voting Public will finally be provided with the type of voting accountability we have always deserved as a most basic protected Right under the Constitution. By implementing central servers only in polling places and not connected via phone lines, a completely secure system can be successfully setup in a matter of days using already existing computers out of the various State's bureaucracies. This clear and imminently available remedy should be executed in every state whereby the margin of error of punch-balloting systems was greater than the margin of "victory" claimed by either candidate. By this simple available remedy, America will finally be able to have a certain victor in the Presidential

Election, instead of being forced to suffer with a continuing dark cloud of doubt hanging over our national trust and future, a cloud which is affecting the entire world in ways which are damaging to our global and domestic interests.

The Corrective Re-vote Plan benefits both parties and the American Public equally, by providing a template by which the current litigious downward spiral and inherent divisiveness can be effectively neutralized simply by serving the best interests of all the people and not just two narrowly defined constituencies. Furthermore, if the candidates can be persuaded to enter into this Corrective Re-vote, compromise-agreement willingly, the nation could finally extricate itself from the tangled web of litigation threatening to completely eliminate the importance of the voters in determining this election.

A compromise between the two candidates would effectively take a crisis whereby neither candidate has a chance to be elected without a stain of illegitimacy, and instead, can convert it into a golden opportunity to exercise an historic moment of bipartisan cooperation capable of unifying an entire nation, and even a large part of the globe. Even if it is necessary to enjoin Congress and the President to coordinate this Corrective Re-vote method of Constitutional equal protection, in the name of federal balance and maximum legal validity, this is clearly an effort well worth undertaking, for it is capable of finally satisfying our Constitutionally mandated right as voters, to be the true deciding voice in selecting the next President. As the instructive beacon of democratic virtue and stability for the entire world, we are now charged with a crucial test. Do we stand on the rock of our faithful Constitution, or do we allow the combined pressure of public opinion polls and the media to dictate the course of action to be taken here? Thank you for taking the time to consider the viewpoint of a common citizen. Your generosity of spirit and fairness will not soon be forgotten. SPECIFIC CONSTITUTIONAL CITES RELATED TO THIS APPEAL FOR A CORRECTIVE RE-VOTE OF ALL STATES WITH A MARGIN OF CURRENT BALLOT ERROR IN EXCESS OF

THE DECLARED MARGIN OF VICTORY.

The Fourteenth Amendment is the basis for the urgent Corrective Re-vote remedy sought within this brief -- a restoration of equal protection of every citizen's most basic Democratic Right under the Constitution, which is the official foundation of our National Law. "No State shall make or enforce any law which shall abridge the priveleges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." Liberty is most elementally and significantly defined by our citizen Right to vote and to have our votes counted in the most efficient and voice-preserving manner technologically possible at any given time.

Therefore, the Fourteenth Amendment can be clearly applied and interpreted to mean, every available effort (i.e.. The best current technology available for reducing the number of uncounted and uncountable votes to an absolute minimum) must be vigilantly made a top budgetary/legislative priority in order to count every vote cast. Clearly, the fact that it is a matter of public record, that the Congress' own election commission reported to them over twelve years ago, that America's voting apparatus was badly in need of repair due to an unacceptably high margin of lost-vote error, and yet, here we are these twelve years later, left with the same inefficient, Fourteenth Amendment-breaking equipment, which now has left the nation twisting in the wind and filled with the shrill voices of partisan enmity and division, because we are unable to satisfactorily determine the true Presidential winner from the original, largely bogus, vote tally.

We are charged by our very Constitution, to fix this elemental breach of our Democratic Process as it affects the current election tabulations. A Corrective Re-vote in all states whereby the margin of tabulation error is, close to, or greater than, the margin of claimed "victory," should be accomplished by using

more efficient replacement voting systems which could be setup and executed in less than two weeks. Regarding the legal validity of such a Corrective re-vote mandate, the Constitution provides supportive remedy in the Twentieth Amendment which clearly states: "If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a president elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified." By this language, Congress is capable of legislating that a new, valid voting process be implemented to determine the true will of the voters. This can be simply accomplished by replacing antiquated voting methods which are in violation of the Fourteenth Amendment, with currently available, easy to install technologies which, by the opinions of numerous computer experts, could be easily configured and deployed in less than two weeks, thereby finally producing a vote tabulation which genuinely does everything humanly possible to count the maximum number of voters ballots, successfully and with a much more narrow margin of error than is available via the punch-ballot system.

Another Constitutional Provision which can be implemented in support of a Supreme Court directed mandate for a Corrective e-vote, is cited in Article I, section 8, which states that the Congress has the right to-- "...make rules for the Government..." Considering that there is a Federal Election Commission, this provision can be interpreted to include Congress' ability to direct this body in securing a truly "fair and accurate' vote tally as ultimately mandated by the Fourteenth Amendment of the Constitution. Furthermore, Article I, section 8 of the Constitution sets forth-- "The Congress shall have power to...make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other

Powers vested by this Constitution in the Government of the United States, or in any department or Officer thereof."

In other words, as necessity dictates in serving the rights of the citizens under Constitutional Law, and in the name of Justice and Equality as pertains to the most basic principles of our Democracy in these United States, the Congress has the ability to form legislation in any and all areas of governance, including elections, and especially for the sake of optimally protecting every citizen's Right to equal protection under the law. Furthermore, the current media drumbeat, that the December deadlines, for the choosing and meeting of electors, is somehow etched in stone, is specious. Article II section 1 of the Constitution clearly sets forth -- "The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States." This article clearly gives the Congress discretion to officially set any date within a reasonable time frame and taking into consideration, unusual circumstances such as are confronting the nation now, as we seek resolution to the fact that the current vote tally has a known margin of error far in excess of the possible margin of "victory" to be claimed by either candidate, thereby rendering the current vote count to be unconstitutional and therefore, invalid, as described by the Fourteenth Amendment, which guarantees the right of each individual citizen to enjoy equal protection under the Law, the true and specific measure of which is the vigilance in maintaining the highest possible vote collection standards of efficiency, as provided for by the implementation of the most competent available technology for ensuring the maximum number of votes are counted in any given election. This most basic Constitutional/Democratic Right, to have every vote counted as efficiently as possible, should easily supercede any budgetary considerations and be made a requisite part of Congress fulfilling Its duties as specified by the Constitution and also, as these duties are detailed in the Voters Rights Act.

Another Constitutional Article which may be implemented to

successfully mediate the current and possibly future election crises, is as follows, from Article II, section 2, which states -- "He (the President)shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur..." Nowhere does it state that such mediation is restricted to foreign affairs alone. Hence, the President should be allowed to, with the Advice and Consent of the Senate, provide for such terms of formal mediation in the form of a treaty (detailing a Corrective Re-vote Strategy), between two warring domestic parties within these United States, in the name of the Common Good and the general Peace. Such an effort would be a vital supplement to upholding the virtues of equal protection as described by the Fourteenth Amendment, by invoking a truly bipartisan compromise seeking the refuge and commonality that should exist in helping to protect the voting rights of average citizens.

Furthermore, Article II, section 3, empowers the President further, stating -- "He shall from time to time, give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public ministers; he shall take Care that the laws be faithfully executed, and shall Commission all the Officers of the United States." Clearly, the language stating the President, "...shall take care that the laws be faithfully executed..." charges the President to intercede publicly by directing the Congress to expedite the passage of corrective legislation calling for a Corrective Re-vote, in this case, on behalf of all citizens whose basic protections under the Fourteenth Amendment are being stipped from them by the current deeply flawed and imminently correctable voting apparatus which is guilty of denying thousands of American Citizens of their most cherished and basic Democratic Right, to have their voices heard in a Presidential election, or any other

election for that matter.

With regards to the Supreme Court, as it pertains to the current election crisis, Article III, section 2 clearly sets forth -- "The judicial Power shall extend to all Cases, in Law and equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority...to Controversies to which the United States shall be a Party; -- to Controversies between two or more States; -- [between a State and Citizens of another State; --]between Citizens of different States..." Clearly, this Article and section provide for the Supreme Court's inherent Power to adjudicate on the grounds that a clear and bitter Controversy exists, "to which the United States shall be a Party..." and which can be simultaneously defined as being, "between a State (Florida) and Citizens of another State (I'm from New Mexico)." In fact, the article applies in every stated context to the current Controversies swirling amidst the partisan battle for the Presidency. If the will of the voters, as protected under the Fourteenth Amendment, is properly upheld, all other litigation becomes moot, and we can finally have a restoration of our national Peace and Tranquility. In support of the right of common citizens such as myself, in making appeals to the Supreme Court, or any other Federal or Public Institution, the First Amendment clearly states -- "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."This is precisely the Constitutional Right being exercised by the filing of this Amicus Curiae Brief. The Tenth Amendment is also instructive in helping to clarify the current Presidential Election dispute by asserting -- "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Therefore, by the Charge of the Tenth Amendment, any citizen ("the people"), has the Right to assert our Constitutional empowerment to express remedies at times when such solutions are not forthcoming from the other branches of Government. To that end, and under the aegis of the Tenth Amendment, I am submitting a call for a Corrective Re-vote in all states with a margin of "victory" not large enough to overshadow the margin of error relative to current balloting techniques, and as required by the equal protection afforded to every voter under the Fourteenth Amendment. The very presence of voting methods which discard the will of thousands of American voters is simply unconstitutional and must not be allowed to stand. To allow the current invalid vote to remain, is to allow for the most elemental

subversion of our Democratic process while simultaneously ignoring the implicit mandate of the United States Constitution.

In conclusion, I feel it is my civic duty to this great Promised Land we call America, to speak out on behalf of the sacred trust of our democratic Process, the heart of which is our equal protection under the law as guaranteed by the Fourteenth Amendment of the Constitution. I do not use the term Promised Land, lightly here. For truly, when we consider the full weight of what America has represented to so many oppressed and yearning cultures for so many generations, one can clearly see the living truth is far more palpable than the tired cliche.

We are a Promised Land, and it is our sacred Democratic trust to treat our nation as such, for when that most basic Right to be counted in participating in the solemn duty of selecting our President, is reduced to a mere formality with no actual substantive regard for the true will of the voters, we are allowing the very Constitutional Foundation this nation depends on for Its stability and prosperity, to be grossly eroded and intentionally left in disrepair. By such calloused disregard is the road to ruin paved. Please, consider this appeal of a common citizen, with an open heart and mind, for the very core of our Democratic ideals as we apply them in the practical workings of our nation, and as they contribute to the overall Peace, is hanging in the balance.

By simply and justly upholding the Constitution, America's citizens will finally receive our fair and equal protection under the law. Allow the voters a fair and efficiently managed election, and we can finally have a vote which will not be arbitrarily voided, or poisoned by unquenchable doubt and the partisan enmity which is sure to escalate in increasing measure as our new President attempts to serve the public interest and trust.

We The People of these United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. By mandating a Corrective Re-vote, the Supreme Court will successfully defend and honor all of the basic Constitutional imperatives set forth above and in the preceding pages, for the greater good of every American, from common citizens like myself, all the way up to the President of the United States. As the current Presidential Election crisis continues to unravel along with the public's confidence and trust, We The People, in order to form a more perfect Union, are words we must never allow ourselves to forget, for they are far

more than just words, they are our living link, the precious membrane by which our democratic Vitality and Purpose are essentially nourished and preserved. Thank you for your time and consideration of this urgent plea.

Respectfully Submitted,

Gregory Apelian
534 Jewel Court SE,
Rio Rancho, New Mexico 87124

EXHIBIT 2:

AMICUS CURIAE BRIEF
Pro Se (Now Consolidated with Brief Amicus Curiae DISENFRANCHISED VOTERS IN THE USA)
U.S. Supreme Court
Docket # 00-836
November 28, 2000

Justin A. Frank, MD
3235 P St., NW
Washington DC 20007

QUESTION PRESENTED:

Whether deprivation[1] experienced by and known to up to 30,000 registered voters in Florida whose ballots were, for one reason or another, not counted in the final tally can cause voters in Florida in particular, and the entire American electorate in general to suffer serious alienation from democratic institutions thus leading to either apathy or a rise of violence on an unprecedented scale?

Justin Frank, MD, is a non-partisan physician, committed to the free and fair operation of our legal/political system. He holds an abiding concern for freedom of participation in our system of government as essential to individual well-being. Through Dr. Frank's large experience working with families, we as an association[2], are acutely aware of the necessity for recognition of an individual's intention and of the repercussions that result when intentions are frustrated or ignored. Further, we are aware of the fragility of systems which foster and guarantee that recognition. The frustration of expectations can set in motion the capacity for destructive patterns of behavior, including but not limited to rage and or its opposite extreme, retreat and apathy. Security is a prerequisite for the development of confidence in the political life of a nation. Where a voter is deprived of the experience of a secure environment based on transparency and predictability, the experience of negative consequences are not

[1] Those citizens who are "disenfranchised" include: the UN-counted (e.g. overseas military ballots):the DIS-counted (e.g. those whose ballots were discarded because machines failed to read them: those who asked for a fresh ballot because of machine malfunction and were refused, etc); and those who felt they were prevented from accessing the polls (viz. reported harassment of minorities).For simplification, the general terms "disenfranchised" and "disenfranchisement" will be used to cover all three categories.

[2] This association consists of Dr. Frank; Micheline K. Frank, DCP; Ellen E. Frank, Ph.D. who collaborated extensively on this Amicus Brief

necessarily contained locally. Accordingly, Dr. Frank feels that it is imperative that the psychological implications of voter deprivation be factored in to the Supreme Court's deliberations of the grave questions presented before it in this appeal.

ARGUMENT

1. In political life, one of the elements necessary for security and well-being is the right to vote and to have that vote count. The psychological damage of an insecure voter environment can be extrapolated from the agreed prerequisites for secure and productive lives. Theimportance of a "political ego"[3] cannot be denied; further, theconsequences, intended and not, for the body politic that result from deprivation of its political ego, cannot be ignored.

2. Voter deprivation affects group cohesiveness and stability. IT ALSO affects how group members perceive the world around them. It can lead to extreme apathy, or violence.

3. The first practical remedy is an expeditious recount of presidential votes. This recount may be accomplished in two ways: a statewide recount which must include dimpled chads as actual evidence of the voter's intention; or a statewide re-election just for President.

The second and only other possible remedy is to divide the electoral votes inhalf (13 to 12 with the majority belonging to the contested winner). Giving all electoral votes to one candidate, given how the close race - without statewide re-count or re-vote - makes no logical sense and will contribute, through voter deprivation, to injury of the voting population. Such injury is characterized by a strong sense of grievance: citizens do not go to the polls to not vote for President. Expeditious methods - for example, the use of volunteers or the National Guard - can be employed to do the recount. This recount should be done by touch as in the Braille Method, as well as by sight: touch is an objective method for detecting the dimpled chad. While any remedy will result in some resentment, turning one's back on voter deprivation would have worse repercussions, both short and long term. "An environment that is passively frustrating...invites depression, or a depressive apathy which may be concealed by the pursuit of any time-killing

[3] Dan Jacobs wrote extensively on the topic of the psychological importance of a political ego. His papers reveal that having a sense of political belonging in our society is an important factor in mental well-being

amusement."[4]

A. THE DANGERS OF VOTER DEPRIVATION.

1. Individual dangers - present and future

To be Discounted is not to have a voice, and thus from a psychiatric point of view, to not really exist. It is thus a denial of the most primitive existential need to "BE." Being requires recognition by other, in this case recognition by the governing body. The repercussions are acute not just for those whose votes are uncounted or discounted, but also for all who witness this process: all lose faith in a system which does not confer recognition upon its members. The sense of outrage expressed by many over the last few weeks is a primitive and powerful feeling that stems from the fear of being erased, or of ceasing to exist as a person. This feeling is compounded by helplessness, which in turn triggers rage, violence towards others, or apathy and depression if turned inward. This trauma results, then, in a distorted self-image, as well as causing the individual to have a distorted image of his world. The individual has fundamental psychological mechanisms at her disposal since birth which help protect her from experiencing feelings of pain, of being attacked, or of the helplessness just described. That fundamental psychological mechanism, "projection", is a method by which the individual gets rid of bad feelings in the mind by relocating them outside the self. Thus aggressive behavior, once a cause of internal conflict or ambivalence, gets attributed to others and the individual now feels she is only acting in response to attack. Such projections are often relocated in our conception of institutions. These numerous projections range from feelings that the Government is greedy and intrusive to a sense that the Government is unreliable and indifferent. Stable institutions withstand such projections. Unstable institutions leave the individual not only unsatisfied but prone to paranoid anxiety and distorted thinking.

Another consequence of disillusionment with the system is the loss of a sense of goodness in the government. One becomes like Aesop's fox and gets filled with feelings of dismissive contempt. Being dismissed results in becoming dismissive. Government, which once was viewed as protecting us from our baser impulses (cf. Freud, Money-Kyrle, and Joan Riviere[5]) no longer is

[4] Money-Kyrle, R. *Psychoanalysis in Politics.* Duckworth Press London 1951, p129

[5] All three eminent psychoanalytic thinkers have contributed extensively to the relationship of individual psychology to social structure. Freud in *Civilization and it's Discontents* (1930); Roger Money-Kyrle in *Psychoanalysis and Politics* (1951) and Joan Riviere in her public lecture "Hate, Greed, and Aggression" (1937), reprinted in Hughes, A. (ed.). *The*

experienced as providing that protection; that security is lost. We then risk resorting to the search for goodness elsewhere. Sometimes this search has a positive outcome: loss may lead to renewed self-reliance or to a focus on religious values. But if this search is accompanied by contempt for the system of government itself, the individual may become enamored with leaders or systems which express his own contempt. Thus hate readily finds an accomplice in the disenfranchised. Government exists, in this psychological function of the mind, as a space, a place to receive "our dangerous and destructive feelings in such a way that we obtain the maximum security in life and pleasure too."[6] In other words, the individual begins to derive pleasure in dangerous and destructive feelings and, consequently, in the expression of these feelings.

One also internalizes dismissive treatment, a process which results in apathy and dismissing of the self by the self. One feels unable to make a difference or to be an active participant in political life. One dismisses others by blaming. In cases of severe injury, the concept of transgenerational transmission of trauma, developed by Dr. Vamik Volkan, applies. Volkan[7] wrote about conscious and unconscious transmission of memories of pain to future generations. Thus the Jewish woman in Palm Beach who was denied another baliot after realizing she had mistakenly voted for Buchanan relived a modified version of the Holocaust trauma. Transmission of post-Holocaust trauma had been interrupted by living in the United States where, until this election, numerous voters basked in the liberty of being able to vote their choice. Suddenly that changed. Some individuals for whom this has changed have filed sworn affidavits in West Palm Beach.

2. The Individual and the System

Those who attain power based on voter deprivation will be those who are content to disregard the disenfranchised. Maintenance of this power comes to require continuing disregard for the disenfranchised. The people who receive projections - those in power - must think about them and modify them, as the healthy mother does for her child. Thus if the mother is accused of being hurtful she has to think about that from the child's perspective and act accordingly. But in the political life of systems, such unwanted projections by individuals are also unwanted by the system itself. The political system then denies the legitimacy of

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inner World and Joan Riviere: Collected Papers 1920-58. Karnac, 1991

[6] Riviere, J., in Hughes, A. (ed.) *op.cit.* p182

[7] Volkan, V. *Bloodlines: From Ethnic Pride to Ethnic Terrorism* Basic Books, New York, 1997

the angry "projectors", labeling them as irrational. A two-way paranoia develops, with neither party being able to listen to or think about the needs of the other. The uncounted will feel discounted, and will suspect the party in power. The party in power will likewise suspect the outsiders. This is a natural psychological process within groups.[8] It is dangerous and may lead those in power to tyrannize those without it. Further, those in charge may attack the very system itself - just as the disenfranchised do. As confidence in the benignity of power relations breaks down because of disputes over feelings of disenfranchisement, we are left with paranoid accusations on both sides - accusations which each side handles differently.

The individual exists within a system which confers identity and existence on that individual. The sense of self as a responsible and contributing individual is challenged if that individual is disenfranchised. Those who are vote-deprived may resort to blaming other systems. For example, if one is discounted by the executive branch of the system - that very system which exists to protect the individual and to ensure that the individual is counted - the individual's only resort is an appeal to the judiciary. For a Chief Executive to in turn attack and "discount" the Judiciary itself is then doubly destructive.

This fractured group behavior is one of the immediate outcomes of voter deprivation. Attacks on the Florida Supreme Court thus have the effect of rendering the disenfranchised individual even more helpless. At the same time, those who attack the system seek to legitimize voter deprivation and to invalidate the system that exists to protect individual rights and freedoms.

3. The Individual and Democracy

If the ingredients of a democratic system are: a) self-defining individuals who have validated existence;
b) an active, participating populace that supports the expression of the individual; c) a structure that respects, confers existence on and counts that populace.

One can see here voter deprivation affecting all levels. The discounting of individual votes, the discrediting of the system for counting those votes, and the attempted discrediting of the judicial appeal system (as "illegal" or "inventing") all combine to create the most subtle and pernicious danger of all, a conflation of our governmental systems into a single system, the rule of those in power. To discount individuals becomes lawful. This evokes chilling echoes of fascist systems.

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[8] Bion, WR, *Experiences in Groups* London, Heinemann Press 1961

In psychoanalytic terms, the mother provides what Mahler calls "object constancy"[9], giving the child the feeling that it can move closer and further away from mother but she will still be there. This sense of a predictable and consistent caregiver gets internalized and the child becomes an adult with a built-in inner stability and sense of self. Still, the environment of the adult must meet similar needs for security. It, too, must be constant, predictable. The right to vote and to have that vote count is just such a necessary precondition of adult object constancy, without which one may develop what we now call "voter deprivation syndrome" - a syndrome in which the victim becomes apathetic and disillusioned with democratic institutions or else becomes violent. These unstable self-states vary with irregular regularity.[10]

A split develops in the mind between the government system (which I will call object) and the self-system (which is the individual whose intentions are thwarted). One result is Rambo - a folk hero who felt that his greatest enemy was not the Vietnam Communists, but our own government which hampered his ability to fight a war to the finish. What may have been humane on the government's part became persecutory and controlling to Rambo. Hence his folk-hero status. That Rambo-as-hero resorted to physical acts of violence and shows of strength, demonstrates one crucial negative consequence of governmental thwarting or neglect. In such movies as "Hopscotch", which came out almost at the same time as Rambo but never enjoyed its popularity, the thwarted individual exacts healthy intellectual and humorous revenge against the thwarting governmental agency.

The aim of integration of self and other fails when the "other" fails the self - actively or passively. A severe split in the mind destabilizes the self which in normal circumstances could rely on the "other" to help regulate his own feelings and actions. The results, according to recent work by Akhtar,[11] are intense oscillations of self-esteem, violent reactions which are unpredictable, and the lack of a feeling of temporal continuity. Experience is fragmented into little bits, rather than felt along a tradition or a continuum. Groups become unable to understand one another and negative mood swings, if unchecked, "might

[9] Mahler, M.S. and Furer, M. *On Human Symbiosis and the Vicissitudes of Human Individuation.* New York: International Universities Press 1968

[10] Frank, JA. "The Voter Deprivation Syndrome, Past and Present", *in press,* 2000

[11] Akhtar, S. *Inner Torment: Living Between Conflict and Fragmentation.* Jason Aronson, New Jersey, 1999 p14.

result in destructive and violent acts."[12]

B. ANALOGY WITH THE FAMILY SYSTEM

The analogy between body politic and the family is of crucial importance in understanding the psychological dangers of voter deprivation. From a psychoanalytic viewpoint, it is impossible to separate the individual's need for recognition from the earliest child/parent relationships. The family model, the analogy between family and body politic, is of crucial importance in understanding the psychological dangers of voter deprivation. The young child thrives best in what Hartmann[13] calls "the average expectable environment." Hartmann states that adults living in society need a benign environment to encourage and not impede growth. He wrote, "the task of man to adapt to man is present from the very beginning of life. Furthermore, man adapts to an environment part of which has not, but part of which has already been molded by his kind and himself…Thus the crucial adaptation man has to make is to the social structure, and his collaboration in building it."[14]

British psychoanalyst Roger Money-Kyrle was explicit in linking family life with political life. He described how the environment impacts the individual - whether it be family environment and the child or the State environment and the adult. He wrote, "The state guarantees us a certain measure of protection. It demands from us a certain measure of obedience. It inspires, or may inspire, our loyalty. In short, our relation to it…is of the same general form as our relation to our parents, so that it is inevitably personified as a parental figure."[15] Beneficent government, as in the case of kind and loving parents, diminishes distortions and promotes clearer thinking. A tyrannical government, however, or one which takes away certain fundamental rights, will increase "the old sense of inner persecution" and the kinds of thoughts which protect against that familiar childhood anxiety.[16] One's conscience becomes modified over time in response to frustrations. Various acts of violence occur without conscious guilt.

FAMILY AS CONTAINER

For a family to feel secure, anxiety stemming from what Money-Kyrle calls feelings of inner persecution needs containment and modification. The government functions as a container of

[12] *Ibid.*

[13] Hartmann, H. *Ego Psychology and the Problem of Adaptation* New York, IUP, 1939

[14] *Ibid.* p31

[15] Money-Kyrle, R. *Op .Cit.* p126.

[16] *Ibid.*

anxieties, a government whose laws keep us from enacting our more base instincts and urges. In families, from the beginning of the mother/infant relationship, there develops over time a sense of confidence in the mother who is able to experience her baby's needs and respond accordingly.

Second, there is the problem of the closed door, the parental bedroom unconsciously out of which the child is locked. The child in a healthy family has hope, he can amuse himself or play with friends or read or watch TV, knowing full well that sooner or later that door will open - even though he experiences pain and frustration when it is closed. Part of the child's confidence is based on the experience of having parents open the door regularly (or even irregularly) before. It is when that confidence is challenged or compromised that the child starts having trouble with issues of trust in his/her environment and eventually having trouble with trust in himself.

The same is true in the larger political sense; in that voters, while not having direct or immediate access to their representatives know that their representatives are responsible to them and can be turned out of office or are available to hear their grievances. If they are not elected - and by this I don't mean that when the candidate favored by the voter of one political party is defeated - the voter still has access as a constituent as well as having hope to change things when elections next come around. There is a sense, therefore, of predictability and of confidence in the system. This helps manage feelings of helplessness and frustration which get stirred up at times when people disagree with policy. Everyone knows that Congress is elected every two years and the Senate every six and that Presidential elections occur every four years on the second Tuesday after the first Monday of November in years divisible by 4. What happens if one doesn't have that confidence - if one can't just vote out a leader or overthrow him? Our government has survived in part because of its having kept faith with the legal system, assuaging what anxiety might otherwise arise if the system were to break down. Otherwise we would have a dysfunctional government, not the steady one described by Churchill as the worst form of government except for all the others.

Law is essential to the processes of predictability, containment, and accessibility. There is an ample body of psychoanalytic literature about the importance of rules in society to protect citizens from themselves. As Dr. Ernest Wallwork wrote, "The rule of law is essential for civilization because humanity's

instinctual predisposition to violence and selfishness requires a mechanism for making it in everyone's self-interest to 'restrict themselves in their possibilities of satisfaction' and to band together to resist domination and exploitation by those possessing superior strength....In order for this to happen, 'the community must be maintained permanently, must be organized, must draw up regulations to anticipate the risk of rebellion and must institute authorities to see that those regulations - the laws - are respected and to superintend the execution of legal acts of violence.'[17]

The rule of law is now in a crisis, as explicit election law may dictate one thing - a smoothly running system. But it can also undermine another - the messy process of having everyone having a say in choosing who will lead that system (the right to vote). What I know is that the thwarting of a person's intent to participate in his or her future, the blocking of access to that participation which is central to our democracy, and the dismissal of predictability that every vote counts and will be counted will have severe deleterious long-range effects on the everyone's psyche and hopes to live in a increasingly secure world.

Freud wrote that justice should apply to everyone equally - and he wasn't one of our founding fathers, though he is one of mine. He noted that when leaders put themselves above the laws which should apply to everyone, they start to re-retreat "from a dominion of law to a dominion of violence."[18] And part of upholding the law requires renunciation of personal desire - at least in some instances. Freud wrote that if just principles and moral precepts benefit everyone in the community, renunciations will be less painful and the community has a better chance of coming together for work and fruitful living.[19]

In development, structure leads to new coping mechanisms to manage and prevent expressions of impulses, pain, loss, greed, etc. Family members may sublimate their destructiveness, for example, into some form of relatively benign sibling competition. But when material structure is compromised in the family as well as in society, similar mechanisms (self-glorification; sense of injustice; an attitude of innocence; sense of entitlement have the opposite intent - instead of being coping mechanisms used to manage or prevent destructive expression,

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[17] Wallwork, E. *Psychoanalysis and Ethics.* Yale University Press, 1991 p.274 Wallwork in that passage quotes S. Freud from the *Standard Edition*: vol. 21:95 and Vol.: 22:205.

[18] Freud, S. *Standard Edition* trans. By James Strachey . Hogarth Press, London Vol. 22, p206 1933

[19] Wallwork, E., *Op. Cit.* P283

they are used to express instincts.[20]

In America, it is the Supreme Court which does a major part of that containing. It protects the rights of citizens to pair off, to argue and fight, to get certain needs met without causing excessive anxiety which would lead to breakdown. All three factors - feeling contained, having access, and having influence - are compromised by the sense of not having one's vote count.

It is impossible to summarize the long term effects that slavery, violence, and murder have had down generations. I insist that no matter how much one may try, that memory - emotional even more than factual - remains unconsciously imbedded in all our souls. A poetic description of this history, this ever-present memory, is described by David Bradley at the end of his novel, *The Chaneysville Incident*:[21]

"For a moment he was not sure that he could lead them, was not sure that they would follow, but then he saw Harriette Brewer take her knife from beneath her shawl and hold it high, and then he heard her, heard her singing softly, then louder, heard the others join in, the words of the song growing, rising up from the hilltop, floating down the incline, the words sharp and clear against the night: 'And before I'll be a slave I'll be buried in my grave, and go home to my God, and be free.' For a chorus or two, or three, the song was loud and strong. And then the song grew weaker, the voices that had raised it falling silent one by one, until at last there was only one voice, a strong soprano voice, carrying the song. And then that voice, too, fell silent. But the song went on. Because the wind had shifted again, and was blowing from the west; because now the wind sang."

CONCLUSION:

In summary there is ample psychoanalytic and historical evidence for the existence of voter deprivation syndrome - which leads to a fragmentation of a sense of self because of the loss of a secure predictable environment. This loss, the indifference to voter intent and to votes being counted, leads to depression and apathy as earlier childhood losses get re-activated. Then there can be a circle of blame, where the person or disenfranchised group starts to see other groups as enemies who are robbing them of their rights. What the groups had in common before this rupture gets lost, and what remains is intense enmity. That is what is happening at present between the supporting camps of the warring political parties: recounting ballots for "A" means voter deprivation to "B"; not recounting

[20] Levin, S. *International Review of Psychoanalysis* Vol. 5, Part 1, 1978
[21] Bradley, D. *The Chaneysville Incident* Harper & Row, New York. 1981

for "B" (meaning that votes have already been counted) means voter deprivation for "A".

The pain of voter deprivation gets handed down unconsciously as injury from generation to generation. While the trauma at first seems only to be in parts of Florida one can see how national interests are at stake. What is at stake is the security of prediction of elections, of redress, which will never be denied by government fiat. At stake is security that votes intended will be votes counted. At stake is confidence in our judicial system to be able to think and then to be able to protect the rights of an injured populace. And what is at stake is the stability of our society which has remained stable through many upheavals in the past because of the rule of law and the knowledge that everyone has a vote in this nation should he choose to exercise that right.

Finally, there have been recent studies made about what Apprey[22] calls transgenerational haunting in which he states "it is as if the injured group has accepted the message that they do not deserve to live [or that they do not count for anything] and therefore must die in one form or another. At the very least that injured group may exist in a reduced form such as living but living a most unproductive life. Here the motor of ambush toward one's death remains the same but the license plate, that is, the form of reducing oneself to nothingness, changes from one generation to the next."

This kind of injury to the body politic, to the political ego - if you will - is an injury to our entire society and its capacity to feel secure in its institutions as well as secure in its power to make a difference by voting and having votes count. Loss of faith in this system has consequences which can only be inferred from what has happened to other groups when their essential freedoms have been usurped - women, African-Americans, European Jews just to name a few. Security in the body politic has reverberations with "containment" in the family - and without either, the sense of political potency elides into apathy and cynicism, leaving feelings of inner persecution and rage unchecked.

It is imperative for the health of our democracy and incumbent on the Court that it address the issue of full recount and/or new vote. It is believed that the High Court's failure to do so would

[22] Apprey, M. "Reinventing the Self in the Face of Received Transgenerational Hatred in the African American Community" in *Mind and Human Interaction* 9: 30-37, 1998

constitute a serious and fundamental abdication of its precious responsibility to uphold the concept of the rule of law. The High Court cannot and should not be dismissive of this concept. Were it to fail to act, the Supreme Court of the United States of America will damage the voter - undermining faith in Court itself as protector and insurer of democracy, of voter value, of voter rights.

EXHIBIT 3:

Pro Se filing of
Amicus Curiae Brief (now consolidated with
DISENFRANCHISED VOTERS IN THE USA)
On behalf of: Richard M. Yellin,
On Petition for Amicus Curiae to the Supreme Court of the United States

Rabbi Richard M. Yellin, A Private Citizen,
10801 Royal Palladium Place
Boynton Beach, Florida 33436
Palm Beach County
(561) 735-3929

Some colleagues asked, what went on here. Here is my own sworn testimony to the DNC – Rabbi Richard M. Yellin. Sworn on Nov. 12, 2000 at DNC Delray Beach Florida (Lake Ida Road and Congress Avenue)

I came to my voting precinct at the St. Thomas More Church in Boynton Beach, Palm Beach County, Florida, at 6 30 am on Election day 2000. I was fifth in line waiting for the precinct to open. By the time it opened, about 30 people had already lined up, and by the time I exited from the poll at 7:15, 100+ individuals were waiting to enter a very crowded precinct area. I was fully prepared to vote my choices with my own pre-prepared list of candidate selections and referendum choices. I came early to vote because I had to be at my Synagogue, by 8 am to speak at a morning religious service.

When I entered the precinct I signed the voter register and received the "computerized ballot." I went to a cubicle on a desk that had a "votomatic" platform which had a "butterfly brochure" fixed on the platform, with pages of the brochure to be turned sequentially so that candidates and referendum questions could be "hole punched," i.e., voted for. I followed the instructions placing the ballot into the slot so that it could be properly fixed and aligned under the "butterfly" so that the holes on the "butterfly" lined up over the computerized "ballot."

At that point I started the voting process. I wanted to vote for Gore/Lieberman. I searched for the Gore "butterfly hole" and could not find it!! The arrows to the right of the candidate's name, pointing to the proper "butterfly hole" did not align

properly !! I struggled to find the appropriate place for my vote, and tried to figure out which one it was by looking at the Bush "hole" and the others on the page. By a process of elimination, I chose the hole I thought was for Gore and Lieberman. I took 3-4 minutes to do this. It made me feel rather stupid, so I hid my stupidity, figuring that I voted my choice. I went on to all the other candidates on the next pages of the "butterfly" and the alignments to the proper holes were arranged neatly and to perfection, and I was out of the little cubicle (which was not very private in the least!), and I took out my "ballot" from the "butterfly" and placed it in the ballot box upon leaving.

As I left I heard 2-5 people complaining that it was difficult to vote for President and V.P. I did not have time to consult with these individuals because I had my appointments. As I drove away, I had a gnawing feeling that something was not right, with the blame on me. I had a sample mock "butterfly" that was mailed out before the election, and I looked at it briefly while driving and I saw that it did not look anything like the "butterfly" that was attached to the "votomatic." At which point I dismissed the experience and went about driving.

At 7:45 am, when I came to my synagogue, (of which I am the Rabbi and Spiritual Leader), Temple Emeth of Delray Beach, a 2800 member congregation of retired senior citizens, our parking lot was a beehive of activity. A voting precinct is housed in our facility's auditorium, and it had lines waiting to go into vote. I went into my office to prepare my sermon and at 8:10 I went out of my office passing the voting precinct waving to many voters whom I knew. I rushed past the auditorium and went into the Chapel and began the service with a sermonette on the subject of voting and religious freedom. I told my "prayers" that in order to be religious, they had to vote, because political freedom is the guarantor of religious freedom. At exactly 8:20 am my speech was interrupted by a synagogue staff member (Jerry Monroe) who said to me in front of the 60 people in the chapel, "There is a problem in the precinct," and he summoned me to the precinct. My 7:15 emotions began to gnaw at me again.

I entered the precinct ahead of the lines and I was told by several people leaving that they had trouble voting their choice for President. In fact one person was crying that she thought she had mistakenly voted for Buchanan.

I summoned the supervisor (Roz Cohen) of the precinct housed in our facility and I asked her to get the butterfly ballot from one

of the "votomatics" and to look at it together with me. Two or three other people gathered around, and it was the identical "butterfly" that I had used at the Church. I said to the supervisor that the arrows are completely misaligned with the holes and therefore the ballots could not be punched, expressing with certainty the intent of the voter. She agreed, and I asked her to interrupt the voting in the precinct and I told her that the precinct should be closed until an announcement was made to all those voting, that 'the "butterfly brochure" was problematic, and that people should exercise great care.'

I said to her that the supervisor of elections in Palm Beach and in Florida should be called immediately. She agreed. The phone lines to the election board were busy. She made the announcements, and I went to call all the media outlets in the area -- 3 TV stations and the radio station of record.

At which point, I felt I did my duty and I went into the synagogue office and began listening to people exiting from the precinct who complained that it was an impossible experience, and how they think they voted for Buchanan by mistake because of the "butterfly." At that point, I too put 2 and 2 together and I think I may have voted for Buchanan, a vote that would be anathema to my whole political disposition.
By 9:15 I had meetings in my office and duties to attend to, and thought that others had been sufficiently apprised of the situation and that it was in hand. Wrong, by mid day all hell broke loose in the media.

Addenda: On Friday night November 10, I had planned to speak about Kritallnacht, the Rabin Assassination, and Veterans Day. Instead, before 500 people I asked them to share their voting experience during election day. Several people got up to speak and told their stories that they had trouble with the "butterfly" in trying to vote for Gore, and they think they voted for Buchanan. (It is important to know that my congregation has well over 100 holocaust survivors, and no one would have knowingly voted for Buchanan. I took a referendum on that!)

At which point several people in the congregation began to laugh at those who expressed a problem with the vote! I asked those who were laughing to explain their lamentable public ridicule. They said they voted, and it was a piece of cake. I then asked them to explain why it was easy for them. They said their "butterfly" was lined up correctly and all they had to do was follow the arrows for the candidates and punch the holes.

In response, those who had the problem, said publicly that they had a DIFFERENT LOOKING "BUTTERFLY" AND THE ARROWS WERE MISPRINTED. I then took a tabulation. "If you thought the votomatic was easy to use, raise your hands." 50% raised their hands. Then: "If you were troubled by the vote and think you may have voted incorrectly for Gore because of your "butterfly", raise your hands." 30% raised their hands. 20% were unsure.

The conclusion of this "Town Hall" sermonic discussion!? There were two different versions of the "butterfly" or maybe even a partial misprint of the butterflies used by many voters in various precincts of Palm Beach County.

I tried the same experiment on Saturday morning to an even larger crowd, dispensing with the planned sermon, asking people to share their voting experiences. The Saturday morning congregation is made up of different people than the Friday night congregation. To my amazement the same thing happened again. People laughed, and slowly they came to the realization that there were 2 different versions to the "butterfly." The tabulation was virtually the same as the previous night.

Conclusion: The real problem is the "butterfly" brochure. There were misprints in the alignment of arrows and holes, and there were bad "butterflies" hovering within and mingling with normal "butterflies," and the way you could predict who received infected misprinted "butterflies," was to scan the precincts where Buchanan received greater numbers of votes than in other precincts in Palm Beach County. Palm Beach County also had more Buchanan votes compared to all the other 50+ counties in Florida. It just so happens that the Buchanan factor surfaced most within Jewish and Afro-American areas and precincts. As an Afro-American pastor, Oliver Wilkins, said, "there is no one in his congregation who would for a moment think of voting for Pat Buchanan." Buchanan subsequently went on air saying he knew that these exaggerated votes, close to 3500 in Palm Beach County, "should not have gone to him."

The real question for these 3500 suspected votes: Why doesn't the government impound all the "butterflies" and search for the misprinted ones.

The media is totally confused by this, and it is no wonder that the former Secretary of State, The Honorable James Baker, could hold up a normal "butterfly," and unconscionably imply,

that elderly, Jewish, African-Ameircans, and Palm Beach County citizens, were "confused" (implying 'stupid'). Mr. Baker, was not confused becauseBush voters were not confused, because their candidate was the first on the list, and you could not mistake punching the Bush "butterfly" hole because it was at the top of the column of holes."

I am a registered independent voter, in the Presidential Election of 2000, born in Philadelphia, PA, who learned as a child: "It is not who won or lost, but how we played the game." In this election, the voting machinery was flawed, not the electorate!

When asked what I recommended, I sent this to all interested parties:

PRESS RELEASE:
Voting Fraud in Palm Beach County

Two area clergymen, Minister Oliver E. Wilkins, of West Palm Beach, Florida, and Rabbi Richard M. Yellin, Boynton Beach, Florida, alleged that voting fraud is a distinct possibility in several Palm Beach County voting precincts that have disproportionately large numbers of elderly, Jewish, or African-American voters. They contend that misprinted/misaligned butterfly brochures rendered the voting machines defective/deceptive when voting for 9 out of the 10 Presidential candidates, making it impossible to properly record voter intent. Many voters thinking they voted for Gore, actually voted for Buchanan. They have also asked the FBI and the United States Attorney for the Southern District of Florida, and the Assistant United States Attorney for election fraud matters, to look into the election fraud with regard to the printing and the distribution of all the butterfly brochures.

Observations on POSSIBLE Voting Fraud in Palm Beach County
Submitted by:
Rabbi Richard M. Yellin, Boynton Beach, Florida

November 26, 2000
We believe that the US Department of Justice will investigate the butterfly brochures of Palm Beach County (and other Florida precincts if necessary). A variety of law enforcement officers will eventually subpoena these butterfly brochures and simply compare them all, and then the world will see that there were defective voting machines -- VOTOMATICS -- in many of the

precincts in Palm Beach County and maybe elsewhere. The FBI, the State Attorney, DOJ, FDLE, and the Special Counsel, will all be asked to investigate. The integrity of the ballot box is the only issue, not who wins the election.

Why are the computerized ballots being recounted when the real problem is the machines and their attached misprinted brochures!? Many individuals will swear that there were misprints/misaligned butterfly brochures. They are the supervisors and workers in several precincts and they represent significant constituencies.

To date, this issue of the misprinted butterfly brochures has not inspired one government official to impound all the butterflies and machines of Palm Beach County. If they investigated the case, they would find that there are two versions!!! Only certain precincts received the misprinted butterflies. The misprints should also prove why Buchanan received more votes in certain heavily populated Elderly, Jewish, or African-American precincts. Misprinted butterfly brochures are the best explanation of that phenomenon.

Guy A. Lewis, United States Attorney for the Southern District of Florida, said, "Election fraud dilutes the worth of votes honestly cast. It also corrupts the essence of our representative form of government. As a crime against both the individual and the government, it will be dealt with promptly and aggressively." Mr. Lewis stated that "some forms of election crime may be easily recognized, such as voter bribery, voter intimidation, and ballot forgery. Other forms of election fraud are more subtle. It is, for example, a federal offense to seek out the elderly, the socially disadvantaged, or the illiterate for the purpose of subjugating their electoral will."

Mr. Lewis said, "The detection of election fraud depends in large part on the watchfulness and cooperation of the American electorate. It is imperative that those who have been asked to participate in questionable election practices, or who have observed or have information regarding questionable activity, **immediately report it to the United States Attorney's Office or to the FBI**. The cooperation of this country's citizens in helping to protect the ***sanctity of the ballot box*** is crucial. It is also appreciated."

In keeping with the above, we offer this summary of our observations and recommendations.

1. All the Butterflies Should Be Subpoenaed. The Findings Will Reveal That There Are Two Versions with Most Misalignments/misprints Going to Precincts with Disproportionate Numbers of Elderly, Jews, or African-americans. If the Distribution of These Misprinted Butterflies Deliberately Targeted These Districts, Fraud Becomes the Major Issue in the Palm Beach and Florida Elections. This Could Be a Civil Rights Issue as Well.

2. The "Official Ballot Sample" Put out by Terry Leporre Is a Conflation, I.e., a Mix of Different Editions and Formats from Previous Years Added to the New 2000 Edition but Unfortunately Not Integrated Properly -- a Graphic Designer or Biblical Scholar Can See the Botched Redaction. If the Pbc Election Commission Misprinted One "Sample," it Is Not Improbable That Pbc Election Commission Also Misprinted "Butterflies" as Well.

3. The 3500+/- Votes for Buchanan in These Palm Beach Precincts Were a Result of Faulty Voting Machines Containing Misprinted Brochures.

4. The Real Problem Was Not with the Ballots, but with the Butterflies. The Recounting of Ballots Only Shows the Problems That Voters Had in Voting, but it Does Not Reveal Mistakes Caused by Voting Machine Irregularities. The Recounting by Hand or Otherwise, Was a Diversion from the Real Issue.

5. The Printer of the 6000+/- Palm Beach Butterflies, Should Be Interrogated. Those Who Made up the Packages of the Butterflies and Distributed Them to the Precincts Should Be Interrogated. The Boards, the Mechanicals and the Negatives of the Printer Should Also Be Impounded. Anyone Who Was Part of the Process That Distributed the Butterflies into the Various Precincts Should Be Interrogated. Those Responsible for Collecting the Votomatics and the Attached Butterfly Brochures Should Be Questioned as Well.

6. The Official Sample Ballot of 2000 Should Be Compared to the Previous Official Sample Ballots Used in Prior Years. Why Was this Year's "Sample" Different from All Other Years and Why?

7. All the Brochures Used in this Year's Election Should Be Checked to See If Indeed They Were the Brochures Attached to and Used in the Votomatics in Election 2000. They Will Show the Appropriate Wear and Tear and the Binding Marks Holding Them into the Votomatics. A Count Should Be Taken of How

Many Brochures Were Printed, and How Many Brochures Were Collected after the Vote. How Many of Them Are Unaccountable?

8. After Seeing What We Saw and Experienced, One Can Only Conclude That There Were Gross Irregularities Bordering on Fraud and Perhaps Touching on the Possibility of a Very Convenient Conspiracy. Only a Complete Investigation Will Uncover the Truth. We Hope That the Irregularities Prove to Be Random. Only an Act of God Could Have Produced this Randomness. If it Was Not an Act of God, it Was Fraud and Conspiracy.

END